

**CITY OF FREDERICK
ZONING BOARD OF APPEALS
PROJECT STAFF REPORT**

February 25, 2014

PROJECT INFORMATION

AGENDA ITEM:	B
NAME OF PROJECT:	105-111 North Market Street
TYPE OF PROJECT:	Variance
CASE NUMBER:	ZBA14-51V
OWNER:	105 North Market LLC & 109 North Market LLC C/O Kimball C. Firestone
APPLICANT:	Architectural Concepts Group, Inc. C/O Roger Schroeder
ADDRESS:	3280 Urbana Pike, Suite 101 Ijamsville, MD 21754
PHONE:	301-831-8900
PROJECT ADDRESS:	105-111 North Market Street
ZONING:	DB (Downtown Business/Residential) HPO (Historic Preservation Overlay)
REVIEW BY:	Jeffrey D. Love
DATE:	February 18, 2014
PROPOSED ACTION:	The Applicant is requesting a 6' variance to the required 10' rear yard setback for mixed-use buildings in the DB (Downtown Business/Residential) district under §405(a), Table 405-1.
EXHIBITS:	Application and Attachments State Department of Assessments Datasheets

BACKGROUND INFORMATION

The buildings at 105/107 N. Market Street ("105 N. Market Street") and 109/111 N. Market Street ("109 N. Market Street") are currently divided into two parcels and there is full separation by a common wall between the two buildings. Currently only one means of ingress/egress is available to the upper levels of the building at 105 N. Market Street and under those circumstances, the use of those levels is restricted per the International Building Code (IBC). The Applicant is proposing to renovate the interior of 109 N. Market Street and construct a third floor addition to provide a stairway and elevator for compliant access to the upper floors of 105 N. Market Street via cross access. The

creation of this access allows for the use of the upper floors of both properties for residential or commercial purposes and will comply with the Americans with Disabilities Act (ADA) and the Fair Housing Act (FHA) for the interior of the buildings.

The Applicant has been working with the City's Historic Preservation Staff and the Historic Preservation Commission (HPC) to create the proposed addition to the structure at 109 N. Market Street as part of case HPC13-852. The Applicant attended HPC Workshops on December 12, 2013 and January 9, 2014 and received positive feedback and as such, will be scheduled for an upcoming hearing for approval.

As part of these discussions, it was determined by staff that a variance to the rear setback requirements under §405(a), Table 405-1 was necessary in order for the proposal to proceed to full design and construction.



As shown, on the aerial photo above, both buildings are built to zero lot lines on sides. While a zero foot setback is permitted on the front and interior lot lines, a ten foot setback is required from the rear lot line. The existing structures are legally nonconforming in this regard as they were constructed in 1922 (105 N. Market St.) and 1886 (109 N. Market St.) prior to City of Frederick zoning regulations. Legally nonconforming structures in the DB district are permitted to remain in perpetuity and in accordance with §902, may be rebuilt in kind or to their original bulk requirements. New additions to these structures however, must meet the current setback requirements and other regulations.

STAFF COMMENTS & ANALYSIS

The City of Frederick Land Management Code (LMC) allows the Zoning Board of Appeals (ZBA) to grant variances from certain provisions or requirements of the Code when all of the conditions set forth in Section 313(c) are met. The Applicant's responses to these conditions are below in italics and Staff's comments then follow in regular text.

1. The variance is not contrary to the public interest.

Applicant responds: The variance requested is to place an egress stair and handicap accessible elevator to the upper floors of both buildings. Currently the upper floors of 105 North Market Street are vacant as there is no code compliant means of egress from those floors so occupancy is impossible. 109 North Market stairs are not code compliant and have some structural problems. The variance provides a means in which to correct the deficiencies in both buildings.

Staff responds: The variance requested for the construction of the addition is supported by many of the policies of the City's Comprehensive Plan in that it promotes redevelopment and reinvestment in the Central Business District and the Frederick Town Historic District. The Applicant has noted that without the addition to provide the code compliant stairs and elevator, the potential for commercial and residential use of the upper floors is severely limited. The ability to provide code compliant access to the upper floors will allow use of the upper floors for commercial space and residential units that will in turn, support the downtown economically and generate revenue for the current property owners to support maintenance of and investment in the property.

The Board must also consider the requested variance in respect to the impact on more immediate aspects of the public interest, including adjacent and abutting properties. The purpose and intent of imposing setbacks is to ensure a minimum standard that allows adequate air and light to reach properties. In this application, the Applicant is requesting to improve a legally nonconforming structure. The existing structure is built to the rear property line which is the side lot line of an abutting property on which the building is also constructed to a zero lot line in a legally conforming situation. As noted above, the proposed addition will be set a minimum of 4' from the rear lot line. As the existing structures do not allow for light and air to reach the side or rear of either structure, the requested variance will maintain the existing condition and not worsening the existing situation.

It should also be noted that per §902 *Nonconforming Structures*, structures in the DB constructed prior to the effective date of the LMC which are destroyed to any extent by fire or other incident may be

reconstructed to reflect the original bulk and architecture regardless of yard requirements specified for the district.

- 2. Whereby reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, or the use of the property or property immediately adjacent, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exception to or undue hardship upon, the owner of such property.**

Applicant responds: Due to unique property lot size, historic character and building envelope with 0 lot lines on three sides of the structures, there are egress issues which currently do not allow the upper floors to be used for the building at 105 North Market Street. The building only has egress out of the Market Street façade which is not allowed to have additional entrances or exits. Therefore we have to utilize the existing doorways on that façade for both the business and residential aspects of the building. The historic heights and small building spaces combined with modern egress requirements have made the upper floors of the building economically and functionally obsolete with ADA and vertical access to the spaces.

Staff responds: As noted by the Applicant, the historic nature of the existing structures poses several barriers to redevelopment namely, access within the building to the upper levels. Alterations to the front façade or other highly visible changes to the building are to be avoided in order to preserve the historic character of the buildings and streetscape. Additionally, the existing zero foot setback coupled with the fact that the buildings on the adjacent properties are also constructed to zero lot lines make other forms of secondary access impossible. It should also be noted that the current use of the first floor and mezzanine of the building at 105 N. Market Street would have to be significantly altered on the interior in order to provide necessary means of dedicated egress from the upper floors of the building. In these regards, it appears that Applicant has reasonably exhausted other options to provide for active use of the upper levels of the subject structures.

- 3. The variance requested is the minimum reasonably necessary to overcome the extraordinary or exceptional conditions applicable to the property.**

Applicant responds: The proposed addition is the minimal size required to provide a code compliant stair and elevator. The addition adds no usable space to either building – it provides ADA access and code compliant egress to both buildings.

Staff responds: The floor plans provided for the renovation and addition indicates that the proposed addition is intended solely to provide the minimal egress requirements and as such, Staff would concur that the requested variance is the minimal necessary to overcome the hardships faced.

4. **The literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Code and would prevent the reasonable use of the property by the applicant.**

Applicant responds: The literal interpretation of the LMC does not allow the required vertical access without a tremendous loss of historic materials and usable space with the small historic structure. The amount of space required for the vertical access elements is disproportionate to the usefulness of the buildings. The LMC encourages the adaptive re-use of the historic structures of the Central Business District and this addition provides for minimal loss of Historic Material in both buildings.

Staff responds: Staff finds that a literal interpretation of §405(a), Table 405-1, the setback requirements, would deprive the Applicant of the right to construct the code compliant stairwell and elevator necessary to reasonably use the upper floors of the existing structures for commercial and residential purposes. The literal interpretation of the LMC would limit the dimensions of the permitted addition without taking into consideration the minimum size necessary to create functional use of the existing structures.

5. **That granting the variance will not confer on the applicant any special privilege that is denied by this Code to other lands or structures in the same district.**

Applicant responds: Approval of this application will not provide special privilege or advantage over other property owners who already have egress to all of the floors of their buildings. This approval merely provides the applicant the opportunity to occupy the upper floors of their buildings.

Staff responds: Staff concurs with the Applicant's statement that in granting the variance, it allows equal opportunity for use of all floors of the existing structures.

6. **That the granting of the variance will be in harmony with the general purpose and intent of this Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.**

Applicant responds: The new vertical access will be in harmony with the LMC as well as the HPC Guidelines. Limiting the addition to three stories in height matches the massing of the existing building and blends well with its surroundings. As a goal of the LMC is to continue the beauty and historic character of the CBD [Central Business District], this addition fulfills the goals of both the LMC and HPC by the adaptive re-use of the existing building which would not be possible without the proposed vertical access addition.

Staff responds: The establishment of the rear setback is to maintain adequate access, light, and air to the subject property and those in the vicinity. Due to the conditions on the property and those immediately adjacent, access is already limited by the existing structures. While reduced from what would normally be required, granting the variance will still permit the addition to be constructed in a manner that allows for light and air to be provided to adjacent properties by maintaining a four (4) foot setback and the availability to access will remain unchanged due to the zero setbacks provided on the lower floors of the structures.

The ability to use all floors of the existing structures through the code compliant egress supports several goals and implementation recommendation of the Comprehensive Plan. Community Character and Design Policy 2 recommends encouraging infill of vacant or underutilized property around the business core. Economic Development Policy 6 further recommends encouragement of upper-story rehabilitation and occupancy and also encouraging infill development and adaptive reuse with the Historic District.

- 7. No variance shall be granted in any case where the applicant or their agent has created or caused to be created a situation which would or has necessitated the issuance of a variance in order for such property to comply with this Code.**

Applicant responds: The applicant has not created or caused to current vertical access requirements of the building codes or ADA. The existing stairs and vertical shaft are not allowed by the building codes and as such the upper floors have remained vacant for years. The applicant has not created or caused to be created the more stringent requirements of the modern building code for life safety and handicap accessibility, the applicant is merely attempting to comply with current regulations.

Staff responds: According to the State tax assessment records, the current owners purchased 105 N. Market Street in 1999 and 109 N. Market Street in 2005. The current owners purchased the property with the existing legally nonconforming structure on the property at that time and no alterations were made to create the existing situation. The Applicant has not created the situation to necessitate a variance, but seeks the ability to provide egress necessary to occupy and reasonably use the upper floors of the structure for permitted uses.

Lastly, as described in §312(e) of the LMC, in the decision making process the Zoning Board of Appeals should consider the following to the extent that they apply to the application:

- 1) The purpose, application, interpretation and standards of the LMC;
- 2) The applicable standards established in Articles 8 and 9 of the LMC;

- 3) The applicable legal standards;
- 4) The orderly growth and improvement of the neighborhood and the community;
- 5) The most appropriate use of land and structures in accordance with the Comprehensive Plan;
- 6) Facilities for sewer water transportation and other services and the ability of the City/County to supply these services;
- 7) The limitations of firefighting equipment and means of access for fire and police protection;
- 8) The effect of such use on the peaceful enjoyment of people in their homes
- 9) The number of people residing, working, or studying the in the immediate area in order to prevent overcrowding or overconcentration of similar uses;
- 10) The type, character, and use of structures in the vicinity especially where people are apt to gather in large numbers such as schools, churches, theaters, hospitals and the like;
- 11) Traffic conditions including pedestrian facilities and parking facilities;
- 12) The preservation of cultural and historic landmarks;
- 13) The conservation of property values;
- 14) The effect of odors, dust gas smoke fumes vibration glare or noise on surrounding properties;
- 15) The contribution that the building, use or addition would make to towards the deterioration of areas and neighborhoods;
- 16) The objectives of the forest conservation ordinance.

STAFF RECOMMENDATION

FINDING OF FACTS

- The subject property is zoned DB and lies within the HPO.
- §405(a), Table 405-1 requires a minimum rear setback of 10' for mixed-use buildings in the DB district.
- The existing structures were built prior to the enactment of City Zoning regulations and are considered legally nonconforming due to the zero setbacks provided on the rear property line.
- The upper floors of 105 N. Market Street may not be occupied for residential or separate commercial use due to egress deficiencies under the IBC.
- The Applicant seeks to construct a third level addition on the building at 109 N. Market Street to accommodate a code compliant stairwell and elevator in order to provide access to the upper levels of 105 N. Market Street and 109 N. Market Street.
- The subject properties are required to be consolidated into a single parcel in order for the proposal to proceed to construction.
- The Zoning Board of Appeals may grant a variance if the proposal meets all decision making criteria set forth in §313(c).

STAFF RECOMMENDATION

Based upon the finding of facts, staff supports a variance of 6' from the required rear setback of 10' for mixed use buildings in the DB district as established in Section §405(a), Table 405-1 to allow for the construction of an addition that is 4' from the rear property line under the powers granted to the Board by Section 203 of the Land Management Code, finding that:

1. The variance is not contrary to the public interest in that the reasonable use of all floors of the existing structures will require an addition to accommodate a means of egress that complies with all building codes.
2. The historic nature of the structures and their existing setbacks on the subject properties create practical barriers to creating means of egress that comply with the required rear setbacks.
3. The requested variance is the minimum necessary to allow for a code compliant stairwell and elevator.
4. That the literal interpretation of the LMC deprives the Applicant of the ability to construct an addition for egress which is necessary for the reasonable and permitted use of the upper floors of the existing structure at 105 N. Market Street, the reasonable use which is commonly enjoyed by other properties in the same district.
5. That the granting of a variance from §405(a), Table 405-1 will not confer on the Applicant any special privileges that is denied by the LMC to other lands or structures in the same district due to the historic and legally nonconforming nature of the structures and the practical barriers created by these existing conditions.
6. That the granting of the variance will be in harmony with the general purpose and intent of the LMC by allowing the property owner the reasonable use of the structure and a means of compliant egress to the upper floors of the buildings.
7. That the Applicant has not created a situation which would necessitate a variance.

Real Property Data Search (w4)

[Search Help](#)

Search Result for FREDERICK COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration
Account Identifier:	District - 02 Account Number - 030802	
Owner Information		
Owner Name:	105 NORTH MARKET LLC C/O KIMBALL C FIRESTONE PO BOX 76 MIDDLETOWN MD 21769-0076	Use: COMMERCIAL Principal Residence: NO Deed Reference: 1) /02525/ 00069 2)
Mailing Address:		
Location & Structure Information		
Premises Address:	105 N MARKET ST FREDERICK 21701-0000	Legal Description: LT 35 X 62 105-107 N. MKT. ST. FREDERICK
Map: 0413	Grid: 0006	Parcel: 0678
Sub District:	Subdivision: 0000	Section:
Block:	Lot:	Assessment Year: 2014
Town: FREDERICK CITY	Ad Valorem: 104	Plat No:
Special Tax Areas:	Tax Class:	Plat Ref:
Primary Structure Built 1922	Above Grade Enclosed Area 8680	Finished Basement Area
Property Land Area 2,170 SF	County Use	
Stories	Basement	Type
Exterior	Full/Half Bath	Garage
Last Major Renovation	MIXED RESIDENTIAL / RETAIL	
Value Information		
Base Value	Value	Phase-in Assessments
	As of 01/01/2014	As of 07/01/2013
		As of 07/01/2014
Land: 154,200	154,200	
Improvements: 454,200	482,500	
Total: 608,400	636,700	608,400
Preferential Land: 0		617,833
		0
Transfer Information		
Seller: DONNELLY, WILLIAM J. FR. ET AL	Date: 01/12/1999	Price: \$400,000
Type: ARMS LENGTH IMPROVED	Deed1: /02525/ 00069	Deed2:
Seller: COKINOS, JOHN D. ET AL	Date: 07/08/1983	Price: \$85,000
Type: ARMS LENGTH IMPROVED	Deed1: /01204/ 00571	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Exemption Information		
Partial Exempt Assessments:	Class	07/01/2013
County: 000		07/01/2014
State: 000		0.00
Municipal: 000		0.00
Tax Exempt:	Special Tax Recapture:	0.00/0.00
Exempt Class:	NONE	
Homestead Application Information		
Homestead Application Status: No Application		

1. This screen allows you to search the Real Property database and display property records.
2. Click [here](#) for a glossary of terms.
3. Deleted accounts can only be selected by Property Account Identifier.
4. While we have confidence in the accuracy of these records, the Department makes no warranties, expressed or implied, regarding the information.

Real Property Data Search (w4)

[Search Help](#)

Search Result for FREDERICK COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration
Account Identifier: District - 02 Account Number - 064847		
Owner Information		
Owner Name:	109 NORTH MARKET LLC	Use: COMMERCIAL
		Principal Residence: NO
Mailing Address:	105 N MARKET ST FREDERICK MD 21701-5421	Deed Reference: 1) /05273/ 00771 2)
Location & Structure Information		
Premises Address:	109 N MARKET-THRU 111 ST FREDERICK 21701-0000	Legal Description: LT 21 3/4 X 62 109-111 N. MKT. ST. FREDERICK
Map: 0413	Grid: 0006	Parcel: 0677
Sub District:	Subdivision: 0000	Section:
Block:	Lot:	Assessment Year: 2014
Plat No:	Plat Ref:	
Special Tax Areas:	Town: FREDERICK CITY	Ad Valorem: 104
Tax Class:		
Primary Structure Built 1886	Above Grade Enclosed Area 4092	Finished Basement Area
Property Land Area 1,350 SF	County Use	
Stories	Basement	Type
Exterior	Full/Half Bath	Garage
Last Major Renovation		
MIXED RESIDENTIAL / RETAIL		
Value Information		
	Base Value	Value
		As of
		01/01/2014
Land:	121,500	121,500
Improvements	338,100	353,500
Total:	459,600	475,000
Preferential Land:	0	0
		Phase-in Assessments
		As of
		07/01/2013
		As of
		07/01/2014
		459,600
		464,733
Transfer Information		
Seller: BOMANGO, NANCY A.	Date: 04/22/2005	Price: \$600,000
Type: ARMS LENGTH IMPROVED	Deed1: /05273/ 00771	Deed2:
Seller: STERN, SEYMOUR & LEE	Date: 12/30/1986	Price: \$175,000
Type: ARMS LENGTH IMPROVED	Deed1: /01386/ 00496	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Exemption Information		
Partial Exempt Assessments:	Class	07/01/2013
County:	000	0.00
State:	000	0.00
Municipal:	000	0.00 0.00
Tax Exempt:	Special Tax Recapture:	07/01/2014
Exempt Class:	NONE	0.00 0.00
Homestead Application Information		
Homestead Application Status: No Application		

1. This screen allows you to search the Real Property database and display property records.
2. Click [here](#) for a glossary of terms.
3. Deleted accounts can only be selected by Property Account Identifier.
4. While we have confidence in the accuracy of these records, the Department makes no warranties, expressed or implied, regarding the information.